DOCUMENT RESUME

ED 279 985 CG 019 794

AUTHOR Neely, Margery A.
TITLE Decisions of Student Affairs Administrators: Ethical or Legal Basis?
PUB DATE 16 Mar 87
NOTE 12p.; Paper presented at the Meeting of the American College Personnel Association/National Association of Student Personnel Administrators (Chicago, IL, March 15-18, 1987).
PUB TYPE Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Administrators; *Compliance (Legal); Confidentiality; Court Litigation; Decision Making; Educational Malpractice; *Ethics; Higher Education; *Legal Problems; *Moral Development; *Student Personnel Services; Student Rights

ABSTRACT

In higher education, trends in student affairs administration have gone from an "obedience" stage through a "due process" stage and back to a contractual "law and order" stage. Today, being an agent of the institution means paying attention to legal implications because of the threat of lawsuits. The Ethics section from a Council for Advancement of Standards for Student Services/Development 1986 newsletter lists ethical standards covering: (1) confidentiality; (2) the Family Educational Rights and Privacy Act regarding student records; (3) human subjects research; (4) fair access to services; (5) conflict of interest; (6) handling of funds; (7) sexual harassment; and (8) limits of expertise. While the Family Privacy Act and sexual harassment law are legal regulations, the other standards are also legal issues, seated in regulations, statutes, or case law. It remains to be determined whether adherence to laws and orders that have a liberal orientation is the same as having higher order moral development, whether it is ethical to call legal guidelines "Ethics," and whether Kohlberg's hierarchy of moral development has relevance in an era when exposure to the larger society as the experiential base for developing principled behavior is confounded by exposure to the liberal laws of the larger society. (NB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Decisions of Student Affairs Administrators: Ethical or Legal Basis?

Margery A. Neely
Kansas State University
Manhattan, KS 66506

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Margery A. Neely
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED279985

CG 019794

Trends

From in loco parentis to students as citizens subject to due process under the Constitution to contractual agreement, the role of the higher education system in relation to its consumers has changed in the latter half of the 20th century (Ardiaolo, 1983). Current high risk areas interpreting student-university relations as a "contract" are in catalogs, application forms, employment matters, disciplinary procedures, grievance or grade appeal procedures, student government relations, and sometimes athletics (if funded under student affairs (Dannells, 1977, 1978; Rhode, 1983). As Ethical Standards are always developed to control or justify behaviors of a group (Mappes, Robb, & Engels, 1985), so too have court cases defined and interpreted Regulations stemming from Federal and state statutes, traditional University procedures, and the Constitution.

The degree to which legal and ethical guidelines shape the administrator's actual behavior - as opposed to tested behavior - on instruments such as Kohlberg's moral development scale is unclear. What is clear is that the above trends in student relations go from a low stage "obedience" to an upper stage "due process" back down to contractual "law and order" - a "J" shaped curve. In contrast, student personnel administrators' higher level, principled behavior appears to be congruent with the liberal philosophy found in Supreme Court interpretations fairly regularly since the 1954 Brown vs. Topeka decision (Woodward & Armstrong, 1979). Not only do the prevailing opinions in the populace create the atmosphere for interpretations but also those legal interpretations shape

Paper presented at the Annual Convention of the American College Personnel/NASPA Associations, March 16, 1987, Chicago, Illinois.

the prevailing opinions in the "hearts of the people" who comply with law. Complying with law is, of course, a lower level stage in Kohlberg's model. Although Richmond (1987) found fewer than 10 percent of the administrators in her study had actual experience with certian legal issues, administrators do use principled professional judgment as well as consult with their attorneys.

Freedom of Speech, of Assembly.

In a speech prepared for university administrators in 1980, Walker emphasized that truly unethical behavior is rare in academic communities. The dilemma he described occurred between what administrators perceive and what faculty perceive as duties and he concluded that the issue is one of interpretation. Reidhaar (1985) graphically illustrated how quickly interpretations may shift, in his observations on partisan political activity at the University of California. "In May of 1964, the President...(of UC-Berkley)...delivered a major address stating that "students, individually or collectively, should not and cannot take the name of the University with them as they move into religious or political or other non-University activities; nor would they or can they use University facilities in connection with such affairs. The University has resisted and will continue to resist such efforts by students...." (p.349)...However, events did not end there.

A group wishing to demonstrate for a moderate Republican presidential candidate at the National Convention across the Bay in San Francisco had buses pull up to the campus boundary for boarding. The University re-asserted its policy against political activities on campus, with a particularly strong statement in September. The campus howled with resentment. The Dean of Students then allowed that the Sproul Hall steps

would be available as a type of "Hyde Park" forum area and that campaign literature could be distributed on campus.

Several students were summoned to discuss violations - and 300 showed up...events concluding with surrounding the police car where one violator had been arrested - and holding that position for 32 hours. Within weeks, the University retreated again and allowed use of facilities for off-campus political action. Such swift changes still affect us.

Contracts

Today, being an agent of the institution (as the Ethical Standards state), means paying attention to legal implications because of the threat of lawsuits - the welfare of the clientele is, of necessity, treated in this light. While student personnel administrators are trained in the counseling skills of being warm, empathic, and genuinely caring individuals and act toward students in a reasonable manner, the threat of litigation guides advice on details such as training subordinates to be careful to follow procedures (Rhode, 1983) in interpretations of grievance policy. As shown in one of Richmond's scenarios (1987), spoken words can constitute a contract.

Ethics

In contrast to the findings reported here today (Richmond, 1987), and similar findings regarding American Mental Health Counselor Association members who relied little on legal guidelines in making responses to ethical conflict dilemmas in a questionnaire, I draw your attention to the Ethics section from the Council for Advancement of Standards for Student Services/ Development (CAS) newsletter (Fall, 1986) (see Table 1) based on legal findings. The Ethics section is part of the introduction called General Standards. Moreover, General Standards not only include a section on "Legal

Responsibilities" but also repeatedly refer to germane legalities in other sections.

The ethical standards cover 1) confidentiality, 2) the Family Educational and Privacy Act regarding student records, 3) human subjects research, 4) fair access to services, 5) conflict of interest, 6) handling of funds, 7) sexual harassment, and 8) limits of expertise (see Table 1). Obviously the second and seventh - Family Privacy Act and Sexual Harassment - are legal regulations, but are these others ethical standards or legal issues? Legal issues they are, seated in regulations, statutes, or case law. Again, the question arises of professional standards - as a form of professional constraint or popular opinion - or of legal constraints or of both shaping each other

Ethical and Legal

1. Mentioned first is confidentiality. In last month's Guidepost (February 5, 1987, p. 6), Bruce R. Hopkins, co-author of The Counselor and The Law (Hopkins & Anderson, 1985) replied to a question from a counseling center director regarding a directive from the dean of students for a list of names of clients. Hopkins referred to the AACD Code of Ethics (1981) but also cited a court case (Pierce v. Ortho Pharmaceutical Corp., 417 A2nd 505 (1980)) that employees not only abide by the law but by codes of ethics of their professions.... Ethics or case law?

2. Note in the standard the absence of the word "subpoena" or of the limits of privileged communication (the "privilege" is owned by the client) vs. confidentiality. ANY clear and imminent danger to self or others and child abuse are legal as well as ethical reasons for breaking confidentiality, seated in the growing body of state statute and court cases emanating from the Tarasoff case. These are called Duty to Warn or Duty to Protect in the case of imminent danger to others and Due Process guidelines surrounding

involuntary commitment (see, for example, Mental Health Law Reporter, 1986) in the case of danger to self.

I might note an unusual twist to the way counselors in mental health centers in medical schools weighed the confidentiality of certain problems. Responding to 10 vignettes drawn from actual incidents, counselors said they do NOT tend to break confidentiality for suicide threats but might for sexual coercion/seduction. "Bomb threat" (danger to others) had the highest likelihood of forcing breach of confidentiality (Lindenthal, Amarento, Jordon, & Wepman, 1984).

3. In 1974, Congress set up a committee to formulate guidelines for the national institutes of health and mental health for the protection of human subjects (Best & Kahn, 1986). A need for guidelines came out of the extreme practices such as research with syphilitic patients that allowed certain prisoners to go untreated and with concerns from the alleged stress of Milgram's research with authority figures ordering research subjects ostensibly to administer electric shock. The bottom line is that Informed Consent outlines the conditions under which subjects are being sought as volunteers for research - the greatest strictures being on research that invades a person's psychological privacy, much as our country has insisted on the privacy of one's property.

4. Fair access to services is set forth in the 1964 Civil Rights Act, the Affirmative Action Order of 1965, the 1972 Education Amendments' Title IX, the 1971 Public Health Service Act, the Training Act and Nurse Training Amendments Act of 1971, and Section 504 of the Vocational Rehabilitation Act (1973) among others.

5. Conflict of interest statutes are set up within laws of states and the Hatch Act governing political activity. In Kansas, the Conflict of Interest statutes were enacted in 1974 and require public disclosure of

holdings that might influence decisions and limit acts that might influence others on the part of government employees.

6. Laws known as misdemeanor and felony laws set forth penalties for malfeasance regarding funds.

7. As harassment regulations were published in 1984, most campuses set up grievance processes for faculty, staff, and students, and made an effort to inform these publics.

8. Finally, limits of expertise are directly related to malpractice suits, since malpractice charges are for negligence, or going beyond one's expertise (Hopkins & Anderson, 1985).

Conclusions

Issues are explored in the particular scenarios chosen by Richmond (1987) for her study of moral development and opinions of court findings. Her scenarios of cases pertaining to the first 7 and 4th Bill of Rights amendments to the Constitution, to Due Process, Contract, Tort, and Title IX yielded no significant relationship to the Kohlberg Defining Issues Test (moral development stages) for the student personnel administrators. Administrators are fed admonishments and advice through the media as each hallmark case arises. As Barr (1983) indicated, prior to '65 there were only 32 landmark cases affecting student development in higher education. Since then, the growth of law applied to higher education has "exceeded all that went before in the history of American Higher education" (Reidharr, 1985, p. 343).

The question that remains is "Is adhering to laws and orders that have a liberal orientation the same as having 'higher order moral development'?" And is it ethical to call legal guidelines "ETHICS"? Finally, does Kohlberg's hierarchy have relevance in an era when exposure to the larger

society as the experiential base for developing principled behavior is confounded by exposure to the liberal laws of the larger society?

References

Ardaiolo, F. P. (1983). What process is due? In M. J. Barr (Ed.), Student affairs and the law. San Francisco: Jossey Bass, pp. 13-26.

Barr, M. J. (1983). Legal constraints on colleges and universities. In M. J. Barr (Ed.), Student affairs and the law. San Francisco: Jossey Bass, pp. 3-12.

Best, J. W., & Kahn, J. V. (1986). Research in education (5th ed.). Englewood Cliffs, NJ: Prentice Hall.

CAS Standards and guidelines for student services/development programs: Ethics. (Summer, 1986). ACPA Developments, p. 6.

Dannells, M. L. (1977). Discipline. In W. T. Packwood (Ed.), College student personnel services. Springfield, IL: Charles C. Thomas, pp. 232-270.

Dannells, M. L. (1978). Disciplinary practices and procedures in baccalaureate-granting institutions of higher education in the United States. Unpublished dissertation, University of Iowa, University, IA.

Hopkins, B. R. (Feb. 5, 1987). Counselors and the law: Law protects counselor-student confidentiality. Guidepost, p. 6.

Hopkins, B. R., & Anderson, B. S. (1985). The Counselor and the law. Alexandria, VA: American Association for Counseling and Development.

Lindenthal, J. J., Amaranto, E. A., Jordan, T. J., & Wepman, B. J. (1984). Decisions about confidentiality in medical student mental health settings. Journal of Counseling Psychology, 31, 572-575.

Mental Health Law Reporter. (Sample issue, 1986). Silver Spring, MD: Business Publishers, Spencer K. Stephens, Ed.

Reidhaar, D. L. (1985). The assault on the citadel: Reflections on a quarter century of change in the relationships between the student and the university. Journal of College and University Law, 12, 343-361.

Rhode, S. (1983). Use of legal counsel: Avoiding problems. In M. J. Barr (Ed.), Student affairs and the law. San Francisco: Jossey Bass, pp. 67-80.

Richmond, J. (1987). Ethical and legal issues among student personnel administrators. Paper presented at the Annual Convention of the American College Personnel Association, March 16, Chicago.

Walker, D. E. (1980). President as ethical leader of the campus. Paper presented at the National Assembly IX, American Association of University Administrators, Toronto, Canada, June 25-28.

Woodward, B., & Armstrong, S. (1979). The Brethren. New York: Simon & Schuster.

Regulations

1964 Civil Rights Act including Equal Employment Opportunity Act (PL92-261; US Code 1970, Title 42, Pr. 20003 et. seq.) of 1972 (PL88-352) (US Code 1964, Titl 28, pr. 1447, subsec d; Title 42, pr. 1971, 1975) (42 US Code p. 2000D, 1982)

1963 Equal Pay Act amended 1972 (PL 88-38) (US Code 1964, Title 29, pr. 206)

1965 Affirmative Action Order amended 1967 and 1969

1972 Title IX of the Education Amendments of 1972 (PL 92-318), 20 USA Code, pr. 1681, 1982)

1971 Public Health Service Act amended by Comprehensive Health Manpower (PL 92-157) (US Code 1970, Title 42, pr. 292, et seq.)

1971 Training Act and Nurse Training Amendments Act of 1971 (PL 92-158) (US Code, 1970, Title 42, pr. 296 et Seq.)

1973 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. pr. 794 (1982)

1975 Education of Handicapped Act, PL 94-142 Tarasoff v. Regents of University of California et al., 13 Cal. 3d 177, 529 P. 2d 553 (1974); vacated, 17 Cal. 3d 425, 551 P. 2d (1976)

1974 Family Educational Rights and Privacy Act of 1974 (PL 93-380) 20 U.S.C. Pr. 438 (1974)

1984 Sexual Harassment (amending the 1964 Civil Rights Act) 29 Code of Federal Regulations (CFR), Section 1604. 11(a).

Table 1

Special Edition, ACPA Developments

Ethics

All persons involved in the provision of services to students must maintain the highest standards of ethical behavior. Staff members of each functional area must develop or adopt standards of ethical practice addressing the unique problems that face personnel in that area. The standards must be published and reviewed by all concerned. In the formulation of those standards, ethical standards statements previously adopted by the profession at large or relevant professional associations may be of assistance and must be considered. Certain ethical obligations apply to all individuals employed in student services/development programs, for example:

All staff members must ensure that confidentiality is maintained with respect to all communications and records considered confidential. Unless written permission is given by the student, information disclosed in individual counseling sessions must remain confidential. In addition, all requirements of the Family Educational Rights and Privacy Act (Buckley Amendment) must be complied with and information contained in students' educational records must not be disclosed to third parties without appropriate consent, unless one of the relevant statutory exceptions applies. A similar dedication to privacy and confidentiality must be applied to research data concerning individuals.

All staff members must be aware of and comply with the provisions contained in the institution's human subjects policy and in any other institutional policy addressing ethical practices.

All staff members must ensure that students are provided access to services on a fair and equitable basis.

All staff members must avoid any personal conflict of interest so they can deal objectively and impartially with persons within and outside the institution. In many instances, the appearance of a conflict of interest can be as damaging as an actual conflict.

Whenever handling funds, all staff members must ensure that such funds are handled in accordance with established and responsible accounting procedures.

Staff members must not participate in any form of sexual harassment. Sexual harassment is defined to include sexual advances, requests for sexual favors, as well as other verbal or physical conduct of a sexual nature if (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic progress or any other outcome of an official nature, (2)...is used as the basis for such decisions or outcomes, ...(3) has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (29 Code of Federal Regulations, CFR, Section 1604.11 (a)).

All staff members must recognize the limits of their training, expertise, and competence and must refer students in need of further expertise to persons possessing appropriate qualifications.